

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 186 of 2005

Aan Singh Bisht S/o Late Dev Singh Bisht,
R/o Spring Field,
Mallital, Nainital. Appellant

Versus

1. M/s Hotel Aroma,
Mallital, Nainital.
2. The New India Assurance Co. Ltd.,
through its Divisional Manager,
Haldwani. Respondents

Mr. Tumul Nailwal, Advocate for the appellant.
None for respondent No. 1.
Mr. T.A. Khan, Advocate for respondent No. 2.

JUDGMENT

**Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.**

RAJEEV GUPTA, C.J. (Oral)

This is claimant's appeal preferred under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by Motor Accident Claims Tribunal/District Judge, Nainital vide Award dated 26.02.2005 passed in M.A.C.P. No. 39 of 2004.

2. Claimant Aan Singh Bisht claimed compensation of Rs. 3,95,000/- by filing claim petition under Section 166 of the Motor Vehicles Act for the injuries sustained by him in the motor accident on 12.09.2003 when he was dashed by the offending vehicle Jeep bearing registration No. UP02 D 6504 resulting in serious injuries and fracture to the claimant. The claimant pleaded that for the treatment of his injuries and fracture, a sum of Rs. 2,00,000/- was spent.

3. The owner and insurer of the offending vehicle Jeep contested the claim and denied their liability to pay compensation to the

claimant. The owner of the Jeep took the plea that the accident did not occur due to the rash and negligent driving of the driver of the Jeep, whereas the insurer of the Jeep took the plea that the Jeep was being plied in breach of the policy conditions.

4. The claimant examined himself as PW1 in support of his claim, whereas the owner and the insurer of the Jeep did not examine any witness.

5. The Tribunal, on the evidence led by the parties, held that claimant Aan Singh Bisht sustained injuries in the motor accident on 12.09.2003; the accident occurred due to the rash and negligent driving of the driver of the Jeep; and the insurer of the Jeep was liable to pay compensation to the claimant.

6. Considering the evidence led by the claimant about the expenses incurred on treatment, including the bills and vouchers in that behalf, the Tribunal awarded Rs. 40,000/- towards Medical Expenses and Rs. 15,000/- towards Future Medical Expenses. Taking into account that the claimant could not attend to his duties for a considerable period during his treatment, the Tribunal awarded Rs. 15,000/- for Loss of Income suffered by the claimant. A sum of Rs. 10,000/- was awarded towards Pain and Suffering. Thus, a total sum of Rs. 80,000/- was awarded as compensation to the claimant for the injuries suffered by him in the motor accident. The Tribunal, further, directed the insurer to pay interest at the rate of 6% per annum in the event of its failure to pay the amount of compensation within a period of 30 days from the date of the Award.

7. Mr. Tumul Nailwal, the learned counsel fro the appellant submitted that the compensation of Rs. 80,000/- awarded by the Tribunal is too low in comparison to the serious nature of the injuries sustained by the appellant in the accident; the appellant had to seek

voluntary retirement from his service on account of the injuries

sustained by him in the accident; and the Tribunal has erred in not awarding interest on the amount of compensation and in directing only a conditional payment of interest in the event of failure of the Insurance Company to pay the amount of compensation to the claimant within a period of 30 days from the date of the Award.

8. Mr. T.A. Khan, the learned counsel for respondent No. 2 New India Assurance Company Ltd., on the other hand, supported the Award and submitted that the Tribunal has been quite liberal in awarding substantial compensation of Rs. 80,000/- to the claimant for the simple fracture of lower end of tibia, which admittedly, did not result in any permanent disability whatsoever.

9. The findings recorded by the Tribunal that claimant Aan Singh Bisht sustained injuries in the motor accident on 12.09.2003; the accident occurred due to the rash and negligent driving of the driver of the Jeep; and the insurer of the Jeep was liable to pay compensation to the claimant have, now, attained finality as the respondents have not filed any appeal against the Award.

10. True, the appellant sustained injuries in the accident, including fracture of the lower end of his right tibia. There is not even an iota of evidence that the injuries and the fracture sustained by the appellant in the accident resulted in any permanent disability whatsoever. As the appellant did not suffer any loss of his future earning capacity on account of the injuries and the fracture sustained in the accident, he is not entitled to receive any compensation under the head of 'Loss of Earning Capacity'.

11. As the bills and vouchers submitted by the appellant before the Tribunal were to the extent of Rs. 40,000/- only, no fault can be found

with the grant of Rs. 40,000/- by the Tribunal towards Medical

Expenses. The Tribunal has been quite liberal in awarding further sum of Rs. 15,000/- towards Future Medical Expenses. The Tribunal has also taken care of awarding Rs. 15,000/- towards Loss of Income which the appellant suffered during the period he remained under treatment. The sum of Rs. 10,000/- awarded by the Tribunal towards Pain and Suffering is quite reasonable.

12. Thus, seen from any angle, the compensation of Rs. 80,000/- awarded by the Tribunal cannot be termed as 'inadequate' so as to warrant enhancement in this appeal.

13. The Tribunal, however, has fallen into error in not awarding any interest to the claimant on the amount of compensation of Rs. 80,000/- In directing only a conditional payment of interest in the event of insurer's failure to make payment within a period of 30 days from the date of the Award, the Tribunal has deprived the claimant of the amount of interest, which was otherwise payable to him. The accident in the present case took place on 12.09.2003 and the claim petition was filed on 24.02.2004. The impugned Award was passed on 26.02.2005 and the amount of compensation of Rs. 80,000/- was deposited by the Insurance Company within a period of one month from the date of the Award i.e. before 26.03.2005. In our opinion, a lump sum of Rs. 5,000/- towards Interest on the amount of compensation of Rs. 80,000/- would be just and proper. We, therefore, award a sum of Rs. 5,000/- towards Interest on the amount of compensation of Rs. 80,000/- for the period from 24.02.2004 to 26.03.2005.

14. For the foregoing reasons, the appeal filed by the appellant under Section 173 of the Motor Vehicles Act is allowed in part.

While affirming the amount of compensation of Rs. 80,000/- awarded by the Tribunal, second respondent New India Assurance Company Ltd. is directed to pay a sum of Rs. 5,000/- towards Interest to the claimant within a period of one month from today.

15. No order as to costs.

(Rajesh Tandon, J.)
28.09.2006

(Rajeev Gupta, C.J.)
28.09.2006

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